

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Denny Roger Bates, # 261356,) C/A No. 4:11-3140-GRA-TER
)
Plaintiff,)
)
vs.) REPORT AND RECOMMENDATION
)
SCDC;)
SCDMH;)
GEO CRCC, and)
Attorney General,)
)
Defendants.)
_____)

This case is before the court because of Plaintiff's failure to comply with the undersigned's Order of March 27, 2012. (ECF No. 28), and because of Plaintiff's failure to prosecute the case by bringing it into proper form in a timely manner.

BACKGROUND AND DISCUSSION

This case was filed by Plaintiff on November 21, 2011 (ECF No. 1), and Plaintiff partially complied with the court's initial Order in the case. (ECF No. 10). Unfortunately, Plaintiff's attempted compliance with the initial Order resulted in confusion as to the intended Defendants in the case when Plaintiff returned service documents containing names different from the Defendants originally named in his Complaint. The court could not direct service in the case until the court was clear as to the Defendants.

The court's second Order in the case was issued on March 27, 2012. In that Order, Plaintiff was directed to provide an amended complaint and completed service documents that clearly showed the persons and/or entities that Plaintiff intended to sue in this case. (ECF No. 28). Review of the file discloses that the second Order and accompanying proper-form documents were mailed to Plaintiff on the same day (March 23, 2012) at the most recent address that he provided to the court, and that the mail was not returned undeliverable. The time for Plaintiff's compliance passed on April 20, 2012 with no response from Plaintiff.

Thus, it appears that Plaintiff received the second Order and accompanying documents, but chose to not respond to the Order.

Applying the four-factor test of *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978) to the circumstances of this case, the failure of Plaintiff to take action and comply with the directions contained in the second Order in this case or to seek an extension of time to do so indicates an intent on Plaintiff's part not to prosecute this case.

RECOMMENDATION

Accordingly, it is recommended that this case be dismissed *without prejudice* due to Plaintiff's failure to comply with this Court's Order and failure to prosecute the case. *See* Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court."); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Plaintiff's attention is directed to the important notice on the following page.

s/Thomas E. Rogers, III

Thomas E. Rogers, III
United States Magistrate Judge

April 30, 2012
Florence, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).